

UNDT/2020/039, Nicholas

UNAT Held or UNDT Pronouncements

Receivability In Lloret Alcañiz et al. 2018-UNAT-840, the Appeals Tribunal specifically addressed the issue of receivability of applications contesting, directly or indirectly, regulatory decisions of the General Assembly. Like in the present case, the applicants in Lloret Aclaniz et al. argued that they were not challenging the decision of the General Assembly to introduce a new Unified Salary Scale but rather the implementation of this new scale by the Secretary-General in their individual cases, who failed to take into account their acquired rights. The applications were found to be receivable but reviewable only on limited grounds of “legality”. In the instant case, the Applicant does not challenge the new scheme for education grant introduced by the General Assembly but rather the manner in which it was implemented by the Administration in her specific case and, more specifically, the manner in which the Secretary-General interpreted resolution 70/244, as providing no discretionary power insofar as tertiary education is concerned, which failed to take into account her personal circumstances prior to withdrawing boarding and travel benefits and lacked consideration of retroactive effect and infringement upon her acquired rights.

Merits The education grant comprises three severable elements: a basket of admissible expenses related to tuition, boarding expenses and education grant travel. Resolution 70/244 reduced the basket of admissible expenses (tuition and related expenses), replacing the percentage reimbursement rate by a sliding scale. On the other hand, the resolution removed the other two elements of the education grant, namely boarding expenses and education grant travel. Following the adoption of the resolution, boarding expenses are no longer covered for tertiary education. The resolution is clear on this point and the discretionary authority conferred by the General Assembly to the executive heads only relates to exceptional granting of boarding assistance to children attending primary and secondary level schools. According to the Appeals Tribunal ruling in Lloret Alcañiz et al., the role of the Dispute Tribunal in reviewing challenges against the implementation of a regulatory decision of the General Assembly is limited to examining “whether the Secretary-General’s exercise of power was illegal” (see para. 68). The Applicant’s situation is similar to the one in Lloret Alcañiz et al. where the Applicant also argues that the implementation of a regulatory decision impairs her existing rights under the Staff Regulations and Rules or her acquired rights. The Dispute Tribunal’s role is limited to examining whether there is a normative conflict (see paras. 69-78 of Lloret Alcañiz et al.) and does not include a review on the ground of reasonableness of the decision (see para. 65 of Lloret Alcañiz et al.). In the instant case, the Organization applied correctly the new statutory regulation. The Secretary-General did not err in its interpretation of para. 29 of resolution 70/244 when he found that he had no discretion to grant the Applicant exceptional payment of boarding and travel expenses. Resolution 70/244 did not consider providing transitional measures for boarding expenses, nor allowed the Organization to take steps to mitigate the effects on the benefits provided in the past according to the former regulatory framework. In other terms, the Organization did not breach the Applicant’s right under staff regulation 3.2 concerning her children’s re-assimilation in their home country or otherwise disrupted her children’s education. The protection of acquired rights, as an essential aspect of the principle of nonretroactivity, concerns -for the future- only the fundamental and essential conditions of the work relationship. The right to the boarding assistance for tertiary education cannot be identified as a fundamental right of the Applicant’s work relationship, especially considering its assistive nature and its extraneousness to the central core of the work relationship, that is the exchange of salary and work. The non-eligibility to boarding assistance for children attending a tertiary level educational institution stems directly from a General Assembly resolution, and the Secretary-General does not have the authority to make exceptions to the General Assembly’s decision. Therefore, the Organization correctly considered that it had no authority to grant exceptions to the decisions of the General Assembly to pay boarding assistance and travel expenses for the Applicant’s children’s education at the tertiary level. In conclusion, also on this point the Applicant’s claims are not founded, considering the clear provisions in resolution 70/244 and the lack of a remedy to the

situation challenged.

Decision Contested or Judgment/Order Appealed

The Applicant challenges the decision not to pay boarding and travel related expenses for her two dependent children under the education grant scheme from January 2018.

Legal Principle(s)

Receivability The Secretary-General has little or no choice in the implementation of the applicable General Assembly resolutions. The power he exercised was purely mechanical, more in the nature of a duty. Nevertheless, purely mechanical powers are still accompanied by implied duties to act according to the minimum standards of lawfulness and good administration: purely mechanical powers are hence reviewable on grounds of legality. Staff regulation 12.1 provides that “[t]he present Regulations may be supplemented or amended by the General Assembly, without prejudice to the acquired rights of staff members”. Given that regulatory framework, according to the general principle of law concerning the enactment of a new discipline, should there be an irreconcilable conflict between two enactments, the later enactment will take precedence over the earlier enactment and be held to have impliedly repealed the earlier enactment to the extent of the inconsistency (*lex posterior derogat priori*). The Appeals Tribunal assimilated the notion of acquired rights with the protection against retroactive application of the law which, therefore, would also be limited to protect staff members against modification of benefits accrued for services already rendered. In other words, a right should be considered “acquired” only if it is a vested right. For instance, a staff member acquires a vested right to a salary for services already rendered on the contrary, promises to pay prospective benefits, including future salaries, may constitute contractual promises, but they are not acquired rights until such time as the *quid pro quo* for the promise has been performed or earned.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Nicholas

Entity

UNOV

Case Number(s)

UNDT/GVA/2018/029

Tribunal

UNDT

Registry

Geneva

Date of Judgement

10 Mar 2020

Duty Judge

Judge Buffa

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Administrative decision

TEST -Rename- Benefits and entitlements-45

Applicable Law
GA Resolutions

- A/RES/70/244

Staff Regulations

- Regulation 12.1
- Regulation 3.2

UNDT Statute

- Article 2.1

Related Judgments and Orders
2018-UNAT-840